



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240

DIRECTOR'S ORDER NO. 131

SUBJECT: Applicability of the Migratory Bird Treaty Act to Federal Agencies and the Requirement for Permits

**Sec. 1 What is the purpose of this Order?** This order clarifies Service policy regarding the applicability of the MBTA to Federal agencies and the issuance of permits to agencies.

**Sec. 2 To whom does this Order apply?** This order applies to all Service employees who administer, oversee, and enforce the migratory bird permit program.

**Sec. 3 What are the authorities for this order?** Migratory Bird Treaty Act, 16 U.S.C. 703-712; 50 CFR 21; and 50 CFR 13.

**Sec. 4 What are the definitions for some terms in this Order?**

a. **Migratory bird** is any species listed in 50 CFR 10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg.

b. **Take** (as defined in 50 CFR 10.12) means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.

**Sec. 5 How does the Migratory Bird Treaty Act apply to Federal agencies?**

a. On July 18, 2000, the United States Court of Appeals for the District of Columbia held in Humane Society v. Glickman, 217 F. 3d 882 (D.C. Cir. 2000), that the MBTA applies to Federal agencies. As the Federal government decided not to appeal this decision, and as all Federal agencies are subject to the jurisdiction of the D.C. Circuit, we will implement the MBTA consistent with this decision. Therefore, it is our position that take of migratory birds by Federal agencies is prohibited unless authorized pursuant to regulations promulgated under the MBTA.

b. Under the MBTA, it is unlawful "by any means or manner, to pursue, hunt, take, capture [or] kill" any migratory bird except as permitted by regulation (16 U.S.C. 703-704). The regulations at 50 CFR 21.11 prohibit the take, possession, import, export, transport, sale, purchase, barter, or offering of these activities, except under a valid permit or as permitted in the implementing regulations.

c. We administer permits to take migratory birds in accordance with regulations at 50 CFR 21, including, but not limited to, 50 CFR 21.21 (import and export), 50 CFR 21.22 (capture of birds for banding and release), 50 CFR 21.23 (scientific collecting and education), 50 CFR 21.27 (special purpose for rehabilitation, education, and other compelling purposes), 50 CFR 21.28-29 (falconry), 50 CFR 21.30 (raptor propagation), 50 CFR 21.41 (depredation permits). In addition to these individual permits, general depredation orders allow take, without an individual permit, provided evidence clearly shows that specific species are causing or are about to cause serious damage to crops or other specific interests (50 CFR 21.42-47).

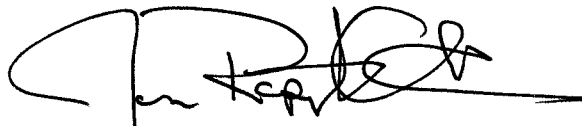
**Sec. 6 How does a Federal agency obtain a permit to take migratory birds?** To apply for a permit, the applicant must complete the Service application form (form 3-200) tailored to the specific type of activity for which the permit is needed and submit the application to the Regional Migratory Bird Permit Office responsible for the State in which the agency office is located. Applications are available from the issuing office or on the Internet at <http://permits.fws.gov/birdbasics.html>. Applications and permits for banding and marking migratory birds are available from the U.S. Geological Survey, Patuxent Wildlife Research Center, Bird Banding Laboratory, 12100 Beech Forest Road, Laurel, MD 20708-4037 (telephone: 301-497-5790).

**Sec. 7 How will the Service evaluate applications for the take of migratory birds by Federal agencies?** We will consider and evaluate the applications in the same manner as we do for private citizens and in accordance with the requirements and criteria set forth in the specific regulations in 50 CFR 21 and the general permit regulations at 50 CFR 13.

**Sec. 8 What other requirements may come with the permit?** We will place conditions on permits based on the activities authorized, including, but not limited to, a requirement to file a report on the species and quantity of birds taken as a result of the permit.

**Sec. 9 What is the effective date of this Order?** This Order is effective immediately.

**Sec. 10 When does this Order expire?** This Order will expire on December 31, 2001, unless amended, superseded, or revoked. We will include the contents of this Order in Part 724 of the Fish and Wildlife Service Manual.



DIRECTOR

Date: DEC 20 2000